

Chapter 7

ANTIQUE DEALERS, COMMON MARKETS, JUNK DEALERS, SCRAP METAL PROCESSORS, PAWNBROKERS AND RELATED BUSINESSES*

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ARTICLE I. IN GENERAL

Sec. 7-1. Dealers in secondhand jewelry, tableware, precious gems, etc.

(a) *Definitions.* The following words and phrases shall have the following meanings in this section:

- (1) *Business* means an activity carried on for profit, but shall not include occasional purchases or trades by a hobbyist.
- (2) *Licensee* means any person licensed as a pawnbroker by the state, as a junk dealer or a secondhand dealer pursuant to article III of this chapter, as an antique dealer pursuant to article II of this chapter or pursuant to this section.
- (3) *Pledged goods* means tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property was deposited with, or otherwise actually delivered into the possession of a pawnbroker as security for money loaned, or on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.
- (4) *Precious metal* means gold, silver or platinum.
- (5) *Tableware* means any flatware, dishes, serving pieces or other items designed or intended to be used in connection with the serving or eating of food when such items are made of any precious metal or wholly or partially plated with a precious metal.

(6) *Used* means any item, article or goods which have been previously owned by someone other than the manufacturer or a dealer whose business it is to sell such items, articles or goods when new to the consumer.

(b) *License required.* No person shall engage in the business of buying, trading, or otherwise receiving used jewelry, used tableware, or other used items containing precious stones or made of or plated with precious metals unless he is licensed pursuant to the licensing provisions of this section, is licensed as a junk dealer or secondhand dealer pursuant to article III of this chapter, is licensed as an antique dealer pursuant to article II of this chapter, is licensed as a pawnbroker pursuant to the statutes of the state or is acting in the employment of one licensed under one of the above-listed laws.

(c) *Application for license.* To obtain a license under this section, the applicant shall file an application therefor in writing to the tax assessor-collector on a form provided for that purpose. On the application, the applicant shall provide the following information:

- (1) The full name and mailing address of each owner and operator of the business;
- (2) Whether any owner or operator is an individual, partnership, corporation, or other legal entity;
- (3) If any owner or operator is a corporation, all officers of the corporation; and if there are fewer than five shareholders, the names of all shareholders;

*Cross references—Automotive dealers, auto wreckers and auto wrecking and salvage yards, Ch. 8; tire storage and tire carriers, § 21-181 et seq.; itinerant vendors, Ch. 22.

- (4) If any owner or operator is a partnership, the names and addresses of all partners;
- (5) If any owner or operator is an association, the names and addresses of all officers of such association;
- (6) The location where the business will be conducted;
- (7) The time period or periods during which the business will be conducted.

Such application form shall be accompanied by an affidavit of the applicant that neither he nor any business partner, nor, in the case of a corporation, any corporate officer, has had a license under this chapter or any preceding city ordinance governing the businesses described herein revoked.

Upon receipt of such application, the tax assessor-collector or his designated agents shall investigate the items sworn to by affidavit. If neither the applicant, his business partners, nor any corporate officers have had a license revoked as described above, the tax assessor-collector shall issue a license to the applicant upon payment of the license fee.

If the tax assessor-collector rejects the application he shall give written notice by certified mail to the applicant at the address stated in the application. The written notice shall specifically set forth the reasons for the rejection. A rejection shall be subject to appeal in the same manner provided in section 7-18 of this Code for an antique dealer's license.

(d) *Fee.* The fee for a license issued pursuant to this section shall be \$50.00 per year. The license shall be valid for one year from the date of issuance unless the applicant does not intend to continue business for a full year and applies for a license for less than one full year. The fee for a license for less than one year shall be \$12.50 for each 90 days or part thereof, or \$2.00 per day, whichever is less.

An organization engaged in a business described herein, but which has qualified as non-profit and which is exempt from taxation under the provisions of Section 501(c)(3) of Title 26 (Internal Revenue Code) of the United States Code, must obtain a license as required herein;

provided however, that such organization shall be exempt from paying the license fee required herein. All other provisions of this section apply to such organizations.

(e) *License valid for one location; change of address charge.* A license issued pursuant to this section shall be valid only for the location set out in the application. However, a license issued pursuant to this section is valid for the purchase, trade or other receipt of any of the items regulated by this section.

Should any person licensed under this section move his place of business from the place designated in such license to a new address, he shall give prior written notice to the tax assessor-collector and have the change noted on his license. A fee of \$2.00 payable to the tax assessor-collector is hereby levied for such a change.

(f) *Records to be kept.* Every person engaged in the business of buying, trading or otherwise receiving used jewelry, used tableware, or other used items made of precious stones or precious metals shall keep at his place of business within this city a consecutively numbered ticket or record book in a form approved by the chief of police in which he enters each such item received on the day the item was received. The ticket or record book shall contain the following information:

- (1) An accurate description of the property;
- (2) The name, address and driver's license or Texas personal identification certificate number of the person from whom such items were acquired;
- (3) The date and hour of acquisition;
- (4) The motor vehicle license number of the vehicle in which such items were delivered, if delivered by motor vehicle.

The licensee, his agents or employees shall obtain a receipt from the seller or transferor of the property. Such receipt shall be dated on the actual date of the transaction and such receipts shall list the items sold or otherwise transferred.

All entries in the record book or on the tickets shall be written in ink and made legibly. Each

person required to keep records under this section shall, upon request, submit and exhibit all tickets, record books, and business records connected with the receipt of goods regulated by this section for inspection and copying to any police officer of the city or authorized inspector of the tax assessor-collector's office at any time during regular business hours. Such records shall be retained for a period of not less than one year after the last transaction entered therein.

Any licensee which ceases to maintain a place of business within this city shall deliver the records kept pursuant to this section to the chief of police within twenty-four (24) hours of the time he ceases to maintain a place of business within the city.

(g) *Seven-day retention period.* A licensee shall ensure that no item regulated by this section which is received by him, or by any agent or employee acting in the scope of their employment is melted, altered or defaced unless the licensee has retained the item for a period of not less than seven (7) days after the initial acquisition.

During such seven-day period such items must be retained intact, and they shall be subject to inspection hereunder.

(h) *Dealing with minors.* No licensee shall purchase or otherwise receive in the course of his business, any item, ownership of which is claimed by any minor, or which may be in the possession of or under control of a minor, unless the minor's parent or guardian shall state in writing, that such transaction is taking place with such parent's or guardian's full knowledge and consent.

(i) *Suspicion of stolen property.* It shall be the duty of the licensee, his agents or employees to report immediately to the police department any offer to sell to the licensee, his agents or employees, property which such licensee, his agents or employees have actual knowledge is stolen or by reasonable diligence should know is stolen, together with the identity, when known, and description of the person or persons making such offer. Such licensee, his agents, or employees, shall also report any property acquired by the licensee which the licensee, his agents or employees, subsequently determine or reasonably suspect to be

stolen property and the licensee, his agents, or employees, shall furnish such other information as might be helpful to the police in investigating the matter.

(j) *Revocation of license.* A license issued pursuant to this section may be revoked if the licensee, his agent or employees, have, since the license was granted, violated the provisions of this chapter, or any state or federal statute involving the criminal offense of theft, or the provisions of sections 37.09 or 37.10 of the Texas Penal Code, or that the licensee falsified his original application for a license.

Prior to revocation, written notice shall be given to the licensee or person in charge. Such notice shall set forth:

- (1) The grounds upon which the city will seek revocation of the license;
- (2) The specific acts upon which the city will rely in seeking revocation of the license;
- (3) That a hearing will be held before the tax assessor-collector or his designated agent;
- (4) The date, time and place of such hearing;
- (5) That the licensee may appear in person and/or be represented by counsel, may present testimony and may cross-examine all witnesses.

All hearings shall be held by the tax assessor-collector or his designated representative. Such official shall be referred to as the hearing officer. However, the tax assessor-collector shall not designate any person to perform the duties of hearing officer who has participated in or supervised any investigation of the licensee's place of business or investigation of the charges under which the city is seeking revocation of the license. Nevertheless the person designated as hearing officer may, prior to the hearing, receive a copy of the notice given to the licensee or person in charge.

All hearings shall be conducted under rules consistent with the nature of the proceedings and only evidence presented before the hearing officer at such hearing may be considered in rendering the order.

If the licensee fails to appear at the hearing at the time, place and date specified, the city shall present sufficient evidence to establish a prima facie case showing that there are grounds for revocation of the license.

After completion of the hearing, the hearing officer shall make written findings as to whether or not grounds exist for revocation of the license. If the hearing officer finds that grounds do exist for revocation of the license, he shall revoke it. The decision of the hearing officer shall be final.

A copy of the written findings shall be served on the licensee. If the address of the licensee is unknown or if such findings have been sent certified mail, return receipt requested, and return undelivered, such findings shall be served on the person in charge of the business or on an agent or employee of the licensee.

Any notice provided for in this section may be served by personal delivery or by certified mail, return receipt requested.

In the event a license is revoked, the city shall not be liable to the licensee for any refund of any part of the license fee.

(k) *Exception to article provisions.* The provisions of this section shall not be applicable to any transactions involving the receipt of pledged goods by a pawnbroker licensed by the state.

(l) *Violation; penalty.* Any violation of the provisions of this section shall be punished as provided by section 1-6 of this Code. Each day a violation exists shall constitute a separate offense.

(m) *Posting of license.* A license issued pursuant to this section shall be posted in a conspicuous place upon the licensed premises. (Code 1968, § 28-63; Ord. No. 75-1947, § 1, 10-29-75; Ord. No. 77-1013, § 5, 5-24-77; Ord. No. 81-315, § 1, 2-24-81; Ord. No. 82-133, §§ 1-4, 1-20-82; Ord. No. 92-1449, § 7, 11-4-92)

Charter reference—Penalties for ordinance violations, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 7-2. Used appliance yards; fencing requirements; display, storage, etc.

(a) Definitions.

- (1) The term "used appliance yard" as used herein shall mean any lot or tract of land whereon three (3) or more used appliances are located temporarily or permanently, for whatever purpose, except where all such used appliances are located within an enclosed building.

The term "used" for the purposes of this section shall mean appliances which have been previously owned by someone other than the manufacturer or a dealer whose business it is to sell such appliances to the public.

The term "appliance" as used herein shall mean a household or business apparatus, machine or device which utilizes an electrical, gas or other power supply including, but not limited to, stoves, refrigerators, air conditioners, washing machines, clothes dryers, dishwashers, coolers and freezers.

- (2) The term "solid" as used herein shall mean constructed and maintained so that the outer surface thereof is continuous and without interstices, gaps, spaces or holes. This shall not be construed to prohibit any spaces or gaps left by a properly constructed and maintained chain link fence with strips or slats as hereinafter provided.

(b) Every used appliance yard within the city shall be completely surrounded and enclosed by a solid fence or wall as follows:

- (1) Any side of such yard which extends generally parallel to, and within one hundred (100) feet of any public street right-of-way shall be bounded by a solid fence or wall at least eight (8) feet in height.
- (2) All sides of such yard not included in (1) above shall be bounded by a solid fence or wall at least six (6) feet in height.

(c) Every fence or wall herein required shall be constructed and maintained as follows:

- (1) All fences shall be constructed of wood, masonry, corrugated sheet metal, chain link,

or any combination thereof; provided however, that any one side of a used appliance yard shall be bounded by a fence or wall constructed of only one of the above materials.

- (2) Chain link fences shall be constructed of galvanized chain link fencing with wood or metal slats or strips run through all links of the chain link fence.
- (3) All fences or walls shall extend downward to within three inches of the ground and shall test plumb and square at all times.
- (4) All fences or walls shall be constructed in compliance with all applicable provisions of the Construction Code.

(d) Any part of a fence or wall required by subsection (b) hereof may consist in whole or in part of a solid wall and door, or walls and doors of any completely enclosed building on said premises, if such wall or door meets all construction requirements hereinabove set forth.

(e) Openings in the prescribed enclosure which are necessary to permit reasonable access to said used appliance yards, shall be equipped with a solid gate or gates, constructed and maintained in accordance with the requirements for a fence or wall hereinabove set forth. Such gates shall be closed and securely locked at all times except during normal business hours.

(f) It shall be unlawful for any owner or operator, the agents or employees of an owner or operator, to display, store or work on any appliance or the parts, accessories or junk therefrom outside of the herein required fence or wall.

(g) All used appliances, parts and other materials located in or on the premises of any used appliance yard in the city shall be so arranged as to allow reasonable access to and inspection of the premises by authorized fire, neighborhood protection, and police officials of the city.

(h) Failure to comply with any provisions of this section shall be grounds for the revocation of or the refusal to issue or renew any license required for the owner or operator of such used

appliance yard under any section or subsection of this Code. Any violation of any provisions of this section shall be a misdemeanor.

(Code 1968, § 28-64; Ord. No. 76-1017, §§ 1—9, 6-22-76; Ord. No. 91-1102, § 3, 7-31-91; Ord. No. 93-514, § 14, 5-5-93; Ord. No. 94-674, § 5, 7-6-94; Ord. No. 98-613, § 17, 8-5-98; Ord. No. 02-399, § 17, 5-15-02)

Charter reference—Penalties for ordinance violations, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Secs. 7-3—7-15. Reserved.

ARTICLE II. ANTIQUE DEALERS

Sec. 7-16. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Antique dealer* shall mean anyone who engages in the business of buying, selling, trading, or otherwise dealing in used items which, because of age or design or quality or intrinsic beauty, or rarity or demand or otherwise have a value enhanced over the original value of such goods.
- (2) *Show* shall mean any display and offering of used items for sale or trade by more than one dealer at a single location.
- (3) *Used* shall mean any items, goods, products, wares, chattels, or articles of any sort, which have previously been owned by someone other than the manufacturer, or dealer whose business it is to sell such items, goods, products, wares, chattels, or articles when new to the customer.

(Code 1968, § 6½-1; Ord. No. 76-146, § 1(1), 2-3-76)

Sec. 7-17. License required; display.

No person shall operate as an antique dealer or own any such business without a license as herein provided. A separate license shall be required for

each permanent location of any such business. The license shall be posted in a conspicuous place upon the licensed premises.

(Code 1968, § 6½-2; Ord. No. 76-146, § 1(2), 2-3-76)

Sec. 7-18. Application for and issuance or refusal of license.

(a) Any person desiring a license required by this article shall make application therefor in writing to the tax assessor-collector on an application form provided for that purpose, stating where the business is to be located and the residence address of the owner or manager. Such application form shall be accompanied by an affidavit, sworn to by the applicant that neither he nor any business partner, nor, in the case of a corporation, any corporate officer, has had a license under this chapter or any preceding city ordinance governing the business described herein revoked.

(b) Upon receipt of such application, the tax assessor-collector or his designated deputy shall investigate the items sworn to by affidavit. If neither the applicant, his business partners, nor any corporate officers have had a license revoked as described above, the tax assessor-collector shall issue a license to the applicant upon payment of the license fee.

(c) If the tax assessor-collector rejects the application, he shall give written notice by certified mail, return receipt requested to the applicant at the address stated in the application. The written notice shall specifically set forth the reasons for the rejection.

(d) The applicant shall have 30 days from the date of the mailing of the notice of rejection to appeal the rejection of his application to the city council by filing written notice of such appeal with the city secretary. Upon receipt of such notice, the city council shall notify the applicant of the date and time of the hearing. At the hearing, city council shall hear evidence on the grounds for the rejection of the application. The city council shall sustain or overrule such rejection in writing within ten days after the conclusion of the hearing. The applicant shall be notified

of city council's written decision by certified mail, return receipt requested. The city council's action shall be final.

(Code 1968, § 6½-3; Ord. No. 76-146, § 1(3), 2-3-76)

Sec. 7-19. License fees.

(a) The license fee for antique dealers with a permanent place of business within the city shall be \$50.00 yearly, payable on or before the first day of January of each year. Such license, unless revoked as provided herein, shall be valid from January 1 through December 31 of the same year.

Each licensee with a permanent business location in the city may use the license for that business when attending shows at other locations in the city.

(b) Any dealer described herein who desires to sell items at shows in the city, but who does not maintain a permanent place of business in the city, must apply for and secure a license for each location. License fees for shows shall be \$2.00 per day.

(Code 1968, § 6½-4; Ord. No. 76-146, § 1(4), 2-3-76)

Sec. 7-20. Records required to be kept.

(a) Every person licensed as an antique dealer shall keep at his place of business a record book, in a form approved by the chief of police, in which he shall enter daily a full description of all personal property purchased or otherwise received at his licensed place of business. Such description shall include the date of receipt, the name and address of the person or place of business from which such item was received, and the driver's license or Texas personal identification certificate number of the person selling or otherwise giving the items. All entries in the record book shall be made legibly.

(b) In addition to the requirements set out in subsection (a) hereof, the property shall be fully described including, where customary in the business, the size, weight, material, length, number of items, capacity, and any other designations or descriptions customarily employed in the sale and purchase of such items.

(c) The licensee, his agents or employees shall obtain a receipt from the seller or transferor of the property. Such receipt shall be consecutively numbered and shall be dated on the actual date of the transaction and shall list the items sold or otherwise transferred. An accurate copy or record of receipts obtained shall be retained for a period of not less than three years, and shall be available for inspection upon request during business hours by any peace officer or authorized inspector of the tax assessor-collector's office.

(d) Every antique dealer, shall, upon request, submit and exhibit the various business records which are required to be maintained for inspection or copying to any peace officer or authorized inspector of the city tax assessor-collector. Failure to maintain or to so permit the examination or copying of such records when required shall be a misdemeanor.

(Code 1968, § 6½-5; Ord. No. 76-146, § 1(5), 2-3-76)

Sec. 7-21. Stock to be open for examination.

The stock or inventory of any antique dealer that is openly displayed and available to the public shall at any time during ordinary business hours be accessible for examination by any peace officer or authorized inspector of the tax assessor-collector's office. Failure to permit an examination when requested shall be a misdemeanor.

(Code 1968, § 6½-6; Ord. No. 76-146, § 1(6), 2-3-76)

Sec. 7-22. Articles to be retained at least seventy-two hours.

No antique dealer shall sell, dismantle, deface or in any manner alter or dispose of any item purchased or otherwise received by him at his licensed place of business for 72 hours after receipt. During such seventy-two-hour period, all items of property shall be stored or displayed at the dealer's business location, in the exact form received, and in a manner so as to be identifiable from the description entered in the record book. Such property shall not be kept so as to prevent or impede its examination hereunder.

(Code 1968, § 6½-7; Ord. No. 76-146, § 1(7), 2-3-76)

Sec. 7-23. Purchasing or receiving goods of minors.

No antique dealer shall purchase or otherwise receive in the course of his business, any item, ownership of which is claimed by any minor, or which may be in the possession of or under control of a minor, unless the minor's parent or guardian shall state in writing, that such transaction is taking place with such parent's or guardian's full knowledge and consent. It shall be the duty of such antique dealer to preserve and keep on file, and available for inspection, such written statements of consent.

(Code 1968, § 6½-8; Ord. No. 76-146, § 1(8), 2-3-76)

Sec. 7-24. Change in business address.

Should any person licensed under this article move his permanent place of business from the place designated in such license to a new address, he shall immediately give written notice to the tax assessor-collector and have the change noted on his license. A fee of \$2.00 payable to the tax assessor-collector is hereby levied for such a change. (Code 1968, § 6½-10; Ord. No. 76-146, § 1(10), 2-3-76)

Sec. 7-25. Revocation of license.

(a) Upon written verified complaint filed by any person with the tax assessor-collector setting out facts alleging that any licensee under this article has, since the license was granted, violated the provisions of this chapter, or any state or federal statute involving the criminal offense of theft, or the provisions of section 37.09 or 37.10 of the Texas Penal Code or that the licensee falsified his original application for a license, the tax assessor-collector shall cause the allegations to be investigated.

(b) If just cause exists for a hearing on revocation of a license herein, the tax assessor-collector shall notify the licensee in writing by certified mail, return receipt requested, that a revocation hearing will be conducted at a specified time and place with reference to such complaint. A copy of the verified complaint shall be included, notifying the licensee of the allegations against him.

(c) At the hearing conducted by the tax assessor-collector or his authorized agent, all parties may present evidence and may be represented by licensed attorneys. All parties may question opposing witnesses.

(d) Based on a preponderance of the evidence, the tax assessor-collector or his authorized agent shall determine, whether the license should be revoked. A written copy of the decision shall be sent to all parties by certified mail, return receipt requested, as soon after the conclusion of the hearing as practicable but in no event more than 30 days.

(e) In the event that the licensee's license is revoked, such licensee may appeal the revocation to the city council by notifying the city secretary in writing within 14 days after the revocation. A hearing before the city council shall be set as soon as practicable. Failure to appeal within 14 days shall render the tax assessor-collector's decision final.

(f) At the hearing conducted by the city council, all parties shall have the right to be represented by a licensed attorney and shall have the right to cross-examine opposing witnesses. After hearing the evidence presented by both sides, the city council shall, based on a preponderance of the evidence, render its decision. A copy of the decision shall be sent to all parties by certified mail, return receipt requested, as soon after the conclusion of the hearing as practicable but in no event more than 30 days. The city council action shall be final.

(Code 1968, § 6½-11; Ord. No. 76-146, § 1(11), 2-3-76)

Sec. 7-26. Reports of property suspected stolen.

(a) It shall be the duty of the licensee, his agents or employees to report immediately to the police department any offer to sell to the licensee, his agents or employees property which such licensee, his agents or employees have actual knowledge is stolen or by reasonable diligence should know is stolen, together with the identity, when known, and description of the person or persons making such offer. Such licensee, his agents, or employees, shall also report any prop-

erty acquired by the licensee which the licensee, his agents or employees, subsequently determine or reasonably suspect to be stolen property and the licensee, his agents or employees, shall furnish such other information as might be helpful to the police in investigating the matter.

(b) It shall be unlawful for any licensee, his agents or employees to purchase an item of property on which are written or affixed the words "Property of the City of Houston" or other words demonstrating ownership by the city except in the following circumstances:

(1) Where the person offering such property for sale is an employee of the city authorized by the city treasurer to make such a sale, and provides the licensee, his agents or employees with a written authorization from the city treasurer for the sale of such property; or

(2) Where the person offering such property for sale presents at the time of such offer a valid receipt from the city treasurer evidencing the purchase of such property by the person offering such property.

(Code 1968, § 6½-12; Ord. No. 76-146, § 1(12), 2-3-76)

Sec. 7-27. Exemptions from license fee.

An organization engaged in a business described herein, but which has qualified as non-profit and which is exempt from taxation under the provisions of Section 501(c)(3) of Title 26 (Internal Revenue Code), of the United States Code, must obtain a license as required herein; provided however, that such organization shall be exempt from paying the license fee required herein. All other provisions of this article apply to such organizations.

(Code 1968, § 6½-13; Ord. No. 76-146, § 1(13), 2-3-76)

Secs. 7-28—7-50. Reserved.

ARTICLE III. METAL RECYCLING ENTITIES, SECONDHAND METAL DEALERS AND SECONDHAND DEALERS*

Sec. 7-51. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building construction materials means copper pipe, tubing, or wiring, aluminum wire, aluminum siding, plumbing supplies, electrical supplies, window glass, window frames, doors, door frames, downspouts, gutters, lumber, air conditioning units and other similar materials.

Chief of police means the Chief of Police for the City of Houston and such persons as he may designate to perform his duties under this article.

Clear thumbprint impression means an intentional recording of the friction ridge detail on the volar pads of the thumb.

Director means the director of the finance and administration department or his designee.

Licensee means a person who holds a license to conduct business as a scrap metal processor or secondhand dealer.

Metal recycling entity means anyone, who from a fixed location engages in the business of utilizing machinery or equipment for the processing of or manufacturing of iron, steel or nonferrous metallic scrap and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap for remelting purposes.

Minor means any person under 18 years of age.

***Editor's note**—Ord. No. 2007-295, § 2, adopted March 21, 2007, amended Ch. 7, Art. III, in its entirety to read as herein set out. Formerly, said article was entitled Junk dealers, scrap metal processors and second hand dealers.

Cross references—Automotive dealers, § 8-16 et seq.; auto wreckers and storage yards, § 8-101 et seq.; restriction on location of lots used for open storage by junk dealers and secondhand dealers, § 28-34; tire storage and tire carriers, § 21-181 et seq.

Real-time electronic web-based database means an electronic filing system in which data is organized by fields and records and that is capable of transmitting a file or responding to input immediately via the internet.

Scrap metal means a direct product or byproduct of any form of a manufactured, shaped, or processed iron, steel, aluminum, brass, copper, lead, tin, zinc, or other nonferrous metallic material.

Secondhand metal dealer means a person who operates or maintains a scrap metal yard or other place in which used or previously purchased metal items or scrap metal is collected or kept for shipment, sale, or transfer.

Secondhand dealer means anyone who engages in the business of buying, selling, trading or otherwise dealing in used items, other than metal items.

Show means any display and offering of used items for sale or trade by more than one dealer at a single location.

Used means any items, goods, products, wares, chattels, or articles of any sort which have previously been owned by someone other than the manufacturer, or a dealer whose business it is to sell such items, goods, products, wares, chattels, or articles when new to the consumer.

(Code 1968, § 23-1; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 83-996, § 1, 6-29-83; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-52. Article inapplicable to automotive dealers.

This article shall not apply to businesses licensed as automotive dealers under chapter 8, article II of this Code or pawnshops as defined by state law.

(Code 1968, § 23-2; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 79-1036, § 1, 6-29-79; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-53. Administrative rules.

The director and the chief of police shall promulgate rules and regulations to administer the provisions of this ordinance. Such rules and reg-

ulations shall not conflict with any applicable provisions of this Code. All rules and regulations so promulgated shall be kept on file for public inspection at the office of the city secretary, the office of the chief of police and the office of the director. A copy of the rules and regulations shall be provided to any person upon payment of the fees prescribed by law. Failure to comply with any of the promulgated rules or regulation established under this subsection shall be grounds for the revocation of or the refusal to issue or renew any license required of the owner or operator of a metal recycling, secondhand metal or secondhand business under this Code. The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty, and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license under this article.

(Code 1968, § 23-3; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 82-2038, § 3, 12-22-82; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-54. License required; posting of license.

No person shall operate as a metal recycling entity, secondhand metal dealer, or secondhand dealer or own any such business without a license as herein provided. Any person who engages in more than one business described herein at the same location must obtain a license only for his principal business activity and not for the other businesses. The provisions of section 7-58, requiring that certain records be kept, apply to all businesses carried on at a single location. A separate license shall be required for each permanent location of any such business. The license shall be posted in a conspicuous place upon the licensed premises.

(Code 1968, § 23-8; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 82-2038, § 4, 12-22-82; Ord. No. 86-639, § 2, 5-13-86; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-55. Bond.

(a) The director shall require that an applicant for a metal recycling entity or secondhand metal dealer license file a bond with the application. The bond must be:

- (1) Satisfactory to the director;

- (2) In the amount of \$5,000.00 for each license;
- (3) Issued by a surety qualified to do business in this state; and
- (4) Valid at the time of the application and remain in effect during the entire term of the license.

(b) The aggregate liability of the surety may not exceed the amount of the bond.

(c) The bond must be in favor of the city for the use of the city and the use of a person who has a cause of action under this article against the metal recycling entity or secondhand metal dealer.

(d) The bond must be conditioned on:

- (1) The metal recycling entity(ies) or secondhand metal dealer(s) compliance with this article and rules adopted under this article; and
- (2) The payment of all amounts that become due to the city or to another person under this article.

(Code 1968, § 23-5; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-56. Application for and issuance or refusal of license.

(a) Any person desiring a license required by this article shall make application therefor in writing to the director on an application form provided for that purpose. On the application the applicant shall set forth:

- (1) The full name and residential address of the applicant;
- (2) A statement indicating whether the applicant is a citizen of the United States or an alien legally residing in the United States;
- (3) The applicant(s) social security number or business(es) federal tax identification number;
- (4) The full name and address of each partner if the applicant is a partnership;
- (5) The full name and address of each officer and director if the applicant is a corporation;

- (6) The fixed and permanent location where the business is to be conducted and proof of his ownership of the private property or a written statement including the name, address and telephone number of the property owner or authorized agent, granting permission for operation of the business at the proposed location where his business will be in operation. If the property owner is a partnership or corporation, the statement shall include the name, address, and telephone number of one of the partners or one of the principals prior to issuance of any license;
- (7) The regular days and hours of operation;
- (8) The applicant's date of birth, place of birth, and each address where he has resided in the five years immediately preceding his application;
- (9) A statement of whether the individual applicant, any partner in a partnership, or any officer or director of a corporation, has been arrested, charged, or convicted for any criminal offense in this state or any other state or country. If he has been arrested or jailed for any such offense, he shall set out the offense for which he was arrested, jailed, or imprisoned, the date of the arrest or confinement, and the place, court and case number of the case.
- (10) A statement that neither he nor any business partner, nor, in the case of a corporation, any corporate officer or director, has had a license under this chapter or any preceding city ordinance governing the businesses described herein revoked;
- (11) The signature of the applicant;
- (12) A sworn and notarized statement that all matters stated in the application are true and correct;
- (13) Evidence that he is at least 18 years of age by presentation of valid identification, including a photograph showing the face of the applicant, in the form of:
 - a. A current driver's license from Texas or another state within the United States;
 - b. An identification card issued by the Texas Department of Public Safety; or
 - c. A current passport;
- (14) Such other information as the director finds relevant.
 - (b) The director shall review and approve the application and issue a license unless he finds:
 - (1) The information provided in the application is incomplete, materially false or incorrect or the applicant has failed in any material way to comply with this article and applicable rules and regulations; and
 - (2) The applicant has had a license revoked during the preceding one year period.
 - (c) In the event that the director rejects or refuses to issue an application, the provisions of section 7-75 shall apply.
(Code 1968, § 23-6; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-57. License fees; use of license at shows.

- (a) The license fee for a metal recycling entity, a secondhand metal dealer or a secondhand dealer with any permanent place of business within the city shall be \$250.00 yearly, payable prior to the issuance of the license. Such license, unless revoked as provided herein, shall be valid for one year from the date of issuance and shall be subject to renewal from year to year.
- (b) Each licensee with a permanent business location in the city may use the license for that business when attending shows at other locations in the city.
- (c) Any dealer described herein who desires to sell items at shows in the city, but who does not maintain a permanent place of business in the city, must apply for and secure a license for each location. License fees for shows shall be \$10.00 per day.

(d) Notwithstanding any other provisions of this article, the license fee shall be \$50.00 yearly for any secondhand dealer who deals exclusively in:

- (1) Used books, magazines and other printed documents;
- (2) Used phonographic records, magnetic audio tapes, audio discs or other recordings of sound which do not include recordings of visual images; and/or
- (3) Used items of clothing, except those made in whole or in part from fur, but not in any other items, goods, products, wares, clothes or articles which are subject to regulation under this article. The said license fee shall be paid prior to the issuance of the license or renewal thereof.

A license issued under this subsection shall be conspicuously marked to indicate that the business is authorized to deal only in the items listed in this subsection.

(Code 1968, § 23-7; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 77-1012, § 1, 5-24-77; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-58. Records required to be kept by metal recycling entities, and secondhand metal dealers.

(a) The provisions of this section apply to all businesses carried on at a single location. With the exception of the sale or transfer of aluminum cans, a metal recycling entity or secondhand metal dealer shall keep at his place of business a record in a real-time electronic web-based database, in a form and method approved by the chief of police, in which he shall enter daily, in English, a full description of each transaction in which personal property is purchased or otherwise received at his place of business. Such description shall include:

- (1) The date and time of receipt of any item;
- (2) The full name and current address of the person or place of business from whom each item was received;

- (3) A clear thumbprint impression from the person seeking to transfer, sell or otherwise give the items that are the subject of each transaction;
- (4) Verified evidence that the person transferring, selling or otherwise giving the items is at least 18 years of age by presentation of valid identification, including a photograph of the face of person transferring, selling or otherwise giving the item, in the form of;
 - a. A current driver's license from Texas or another state within the United States;
 - b. An identification card issued by the Texas Department of Public Safety; or
 - c. A current passport.
- (5) A description of the motor vehicle and/or trailer or other mode of transportation in or on which each item received was carried to, delivered or transported to the metal recycling entity, secondhand metal dealer, or secondhand dealer's place of business, including state and license plate number, if applicable;
- (6) The individual transaction number assigned by the licensee to each item received;
- (7) A description of the items received as part of the transaction including, where customary in the business, the size, weight, material, length, capacity, and any other designations or descriptions customarily employed in the sale and purchase of such items;
- (8) A digital photograph of each item received;
- (9) If the item received is a junked, abandoned or wrecked automotive vehicle, documentation of ownership and any other information required for receipt of such vehicles as provided in state or federal laws or regulations and any provision of this Code;

(10) The name or employee number of the employee who facilitates or conducts the transaction.

(b) The real-time electronic web-based database described in subsection (a) of this section shall be created and maintained by the police department. The metal recycling entity or secondhand metal dealer shall forward the required record and descriptions set forth in subsection (a) of this section in an electronic format to the designated police department web site before the close of business on each day on which the metal recycling entity or secondhand metal dealer is open for business. Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity or secondhand metal dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(c) The metal recycling entity or secondhand metal dealer, his agents or employees shall obtain a consecutively numbered receipt from the seller or transferor of the property. Such receipt shall be dated on the actual date of the transaction and shall list the items sold or otherwise transferred. A printed version of the record input and transmitted to the real-time electronic web-based database as described in this section shall satisfy this requirement. An accurate copy or record of receipts obtained shall be retained for a period of not less than three years.

(d) A metal recycling entity or secondhand metal dealer shall, upon request, submit and exhibit the various business records that are required to be maintained under this section for inspection or copying by any peace officer or authorized inspector of the director. Failure to maintain or to so permit the examination or copying of such records when requested shall be a misdemeanor.

(e) Each transaction shall be recorded via video device, and each recording medium shall be maintained for a period of one year from the date of the latest transaction recorded thereon. A metal recycling entity or secondhand metal dealer shall post a notice in each place of business regarding the

recording of the transaction via video device pursuant to specifications established by the director and the chief of police. The director shall specify the information to be set out on the notice, the size of the print, the colors, and the location where the notice shall be placed. Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity or secondhand metal dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(Code 1968, § 23-8; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-59. Stock to be open for examination.

The stock or inventory of any metal recycling entity, secondhand metal dealer, or secondhand dealer that is openly displayed and available to the public shall at any time during ordinary business hours be accessible for examination by any peace officer or authorized inspector of the director's office. Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity, secondhand metal dealer or secondhand dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(Code 1968, § 23-10; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-60. Articles to be retained at least 72 hours; tag; exceptions.

(a) *72-hour hold.* No metal recycling entity, or secondhand metal dealer shall sell, dismantle, deface or in any manner alter or dispose of any item purchased or otherwise received by him at his licensed place of business for 72 hours after receipt, provided that he is not required to keep aluminum cans for more than 24 hours. During such 72-hour period, all items of property shall be stored or displayed at the dealer's business location, in the exact form received, and in a manner so as to be identifiable from the description en-

tered in the database. Such property shall not be kept in such a manner so as to prevent or impede its examination.

(b) *Tag.* In addition to the requirements set forth in subsection (a) of this section, a metal recycling entity or secondhand metal dealer shall affix or otherwise attach a tag or label to each item maintained for a minimum of 72 hours under the provisions of this section that includes the date of receipt of the item to which the tag or label is attached, the name and address of the person or place of business from whom such item was received, and the corresponding individual transaction number from the database maintained under section 7-58 of this chapter. Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity or secondhand metal dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(c) *Exceptions.* A metal recycling entity is not required to comply with the provisions of this section if:

- (1) The metal items are not in their original packaging, in which case the metal recycling entity must comply with section 7-67 of this Code, and
- (2) The metal recycling entity verifies that the person or entity seeking to sell or otherwise transfer the metal items has a valid city-issued metal recycling entity or secondhand metal dealer license, which the metal recycling entity or secondhand metal dealer shall record by photocopying the license or recording the license number in connection with the sale and maintain for a period of not less than three years; or
- (3) The metal recycling entity verifies that the person or entity seeking to sell or otherwise transfer the metal items has a valid city-issued construction, demolition, or electrical permit, which the metal recycling entity or secondhand metal dealer shall record by photocopying the permit or recording the project number located

on the permit in connection with the sale and maintain for a period of not less than three years.

(Code 1968, § 23-11; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 82-2038, § 5, 12-22-82; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-61. Purchasing or receiving goods of minors.

(a) No metal recycling entity, secondhand metal dealer, or secondhand dealer shall purchase or otherwise receive in the course of his business, any item, ownership of which is claimed by any minor, or which may be in the possession of or under control of a minor, unless:

- (1) The minor is accompanied by his parent or guardian, who shall state in writing, that such transaction is taking place with such parent's or guardian's full knowledge and consent; or
- (2) The only items offered for sale by the minor are aluminum cans.

(b) It shall be the duty of such metal recycling entity, secondhand metal dealer, or secondhand dealer to preserve and keep on file, and available for inspection, such written statements of consent for a period of not less than three years.

(Code 1968, § 23-12; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-62. Change in business address.

Should any licensee move his place of business from the place designated in such license to a new address, he shall immediately give written notice to the director and have the change noted on his license. A fee of \$2.00 payable to the director is hereby levied for such change.

(Code 1968, § 23-13; Ord. No. 76-271, § 1, 2-17-76; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-63. Revocation of license on verified complaint.

(a) Upon written verified complaint filed by any person with the director setting out facts alleging that any licensee under this article has, since the license was granted, violated the provisions of this chapter or any health regulation of

the city or the state, or any state or federal statute involving the criminal offense of theft, or the provisions of section 37.09 or 37.10 of the Texas Penal Code or that the licensee falsified his original application for a license, the director shall investigate the allegations.

(b) Such complaints shall be investigated, heard, determined, and shall be subject to appeal as provided in section 7-25 as applicable to antique dealers.

(Code 1968, § 23-16; Ord. No. 71-267, §§ 1—3, 2-24-71; Ord. No. 71-825, § 1, 5-4-71; Ord. No. 82-2038, § 6, 12-22-82; Ord. No. 83-996, § 2, 6-29-83; Ord. No. 85-2216, §§ 1, 2, 12-26-85; Ord. No. 90-635, § 18-A, 5-23-90; Ord. No. 92-1449, § 8, 11-4-92; Ord. No. 93-514, § 15, 5-5-93; Ord. No. 94-674, § 6, 7-6-94; Ord. No. 98-613, § 18, 8-5-98; Ord. No. 02-399, § 18, 5-15-02; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-64. Acceptance of property suspected stolen; peace officer requested holds; violation.

(a) It shall be the duty of every metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees to report immediately to the police department, by filing a formal complaint, any offer to sell to the metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees, property that such metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees have actual knowledge is stolen or by reasonable diligence should know is stolen, together with the identity, when known, and description of the person or persons making such offer. Such metal recycling entity, secondhand metal dealer or secondhand dealer, his agents, or employees, shall also report any property acquired by the metal recycling entity, secondhand metal dealer or secondhand dealer that the metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees, subsequently determine or reasonably suspect to be stolen property, and the metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees, shall furnish such other information as might be helpful to the police in investigating the matter.

(b) Notwithstanding the provisions of section 7-60 of this article, it shall be the duty of every metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees to hold all suspected stolen property in a secure place for 60 days upon request by a peace officer. The metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees, may not process or remove the property from the dealer(s) or entity(ies) premises before the sixtieth day after receipt of the request from a peace officer to hold the property unless:

- (1) The item is released into a peace officer(s) care, custody and control at an earlier time;
- (2) A peace officer releases the hold on the property upon an earlier date;
- (3) A peace officer makes a written request to extend the holding period for up to 24 months from the date the request is received; or
- (4) A court orders release of the property.

(c) Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity, secondhand metal dealer or secondhand dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(Code 1968, § 23-17; Ord. No. 83-996, § 3, 6-29-83; Ord. No. 85-2216, § 3, 12-26-85; Ord. No. 90-635, § 18-B, 5-23-90; Ord. No. 92-1449, § 9, 11-4-92; Ord. No. 93-514, § 16, 5-5-93; Ord. No. 98-613, § 19, 8-5-98; Ord. No. 02-399, § 19, 5-15-02; Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-65. Acceptance of building construction materials.

(a) It shall be unlawful for any metal recycling entity or secondhand metal dealer to receive, sell, dismantle, deface or in any manner alter or dispose of any building construction material received by him at his licensed place of business unless he complies with the provisions of sections 7-58 through 7-62 and 7-64 of this Code.

(b) It shall be unlawful for any metal recycling entity or secondhand metal dealer to receive, sell, dismantle, deface or in any manner alter or dispose of any building construction material received by him at his licensed place of business unless prior to receiving, selling, dismantling, defacing or in any manner altering or disposing of any building construction material, the metal recycling entity or secondhand metal dealer:

- (1) Records, along with the description of the property, the serial number, or other identifying characteristics of each part or piece of building construction material; and
- (2) Obtains a written, signed statement from the seller attesting to lawful ownership of the property, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has authorization to sell or otherwise transfer that property.

(Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-66. Government or utility property.

(a) It shall be unlawful for any metal recycling entity or secondhand metal dealer, his agents or employees to purchase or receive an item of property, including but not limited to street signs, traffic signals, manhole covers, road and bridge guard rails, street light poles and fixtures, on which are written or affixed the words "Property of the City of Houston" or other words or markings demonstrating ownership by the city except in the following circumstances:

- (1) Where the person offering such property for sale is an employee of the city authorized by the director to make such a sale and provides the metal recycling entity or secondhand metal dealer, his agents or employees, his agents or employees with a written authorization from the city treasurer for the sale of such property; or
- (2) Where the person offering such property for sale presents at the time of such offer a valid receipt from the director evidencing the purchase of such property by the person offering such property.

(b) It shall be unlawful for any metal recycling entity or secondhand metal dealer, his agents or employees to purchase or receive an item of property that is marked with any form of the name or initials of a governmental agency, including but not limited to the State of Texas and the United States of America and their agencies and political subdivisions or that the metal recycling entity or secondhand metal dealer, his agents or employees know or should reasonably be expected to know belongs to a governmental agency, including but not limited to street signs, traffic signals, manhole covers, road and bridge guard rails, street light poles and fixtures, except:

- (1) Where the person offering such property for sale is an employee of the governmental agency authorized by that agency to make such a sale and provides the metal recycling entity or secondhand metal dealer, his agents or employees with a written authorization from the agency for the sale of such property; or
- (2) Where the person offering such property for sale presents at the time of such offer a valid receipt from the governmental agency evidencing the purchase of such property by the person offering such property.

(c) It shall be unlawful for any metal recycling entity or secondhand metal dealer, his agents or employees to purchase or receive an item of property that is marked with any form of the name or initials of an electrical, telephone, cable, or other public utility company or that the metal recycling entity or secondhand metal dealer, his agents or employees know or should reasonably be expected to know belongs to a public utility unless the person offering such property for sale presents at the time of such offer a valid receipt from the public utility company evidencing the purchase of such property by the person offering such property.

(Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-67. Acceptance of property in original packaging.

It shall be unlawful for any metal recycling entity, secondhand metal dealer or secondhand

dealer, his agents or employees to purchase or receive an item of property in its original packaging unless the person offering such item presents a receipt or proof of purchase for that property. (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-68. Acceptance of property inscribed with company name.

It shall be unlawful for any metal recycling entity or secondhand metal dealer, or his agents or employees, to purchase or receive an item of property that is marked with any form of the name or initials of a private company or that the metal recycling entity or secondhand metal dealer knows or should reasonably be expected to know belongs to a private company unless the person offering such property for sale presents at the time of such offer a written, signed statement from the seller attesting to lawful ownership of the property, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has authorization to sell or otherwise transfer that property. (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-69. Acceptance of property delivered by shopping cart.

It shall be unlawful for any metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees to purchase or receive an item of property that is transported to the metal recycling entity, secondhand metal dealer or secondhand dealer(s) place of business by a shopping cart that is marked with any form of the name or initials of a private company or that the metal recycling entity, secondhand metal dealer or secondhand dealer knows or should reasonably be expected to know belongs to a private company unless the person operating the shopping cart presents at the time of transportation of property to the metal recycling entity, secondhand metal dealer or secondhand dealer presents a valid receipt from the owner of the shopping cart evidencing the purchase of the shopping cart by the person operating the shopping cart. (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-70. Exemptions—From license fee.

An organization engaged in a business described herein, but which has qualified as non-profit and which is exempt from taxation under the provisions of Section 501(c)(3) of Title 26 (Internal Revenue Code) of the United States Code, must obtain a license as required herein; provided, however, that such organization shall be exempt from paying the license fee required herein. All other provisions of this article apply to such organizations. (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-71. Inapplicability of certain chapter provisions.

Notwithstanding any other provision of this article that might be construed to the contrary, the provisions of sections 7-58 and 7-60 of this Code shall not be applicable to the sale, receipt, transfer or holding of:

- (1) Used books, magazines and other printed documents;
 - (2) Used phonograph records, magnetic audio tapes, audio discs or other recordings of sound which do not include recordings of visual images; and
 - (3) Used items of clothing, except those made in whole or in part from fur.
- (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-72. Operation of yards used by secondhand dealers.

(a) *Compliance.* All lots or tracts of land used for the purpose of carrying on the business or trade of a secondhand dealer or used for open storage by a secondhand dealer shall comply with the requirement of this section.

(b) *Removal of flammable liquids from vehicles.* All gasoline, gasohol and diesel fuel shall be completely drained and removed from any junked, wrecked or abandoned automotive vehicle before the vehicle is placed in any yard owned or operated by a secondhand dealer. All flammable liquids drained from any vehicle shall be stored in a safe manner and in strict accordance with the city Fire Code.

(c) *Fencing, wall requirements.* Every yard owned or operated by a secondhand dealer within the city shall be completely surrounded and enclosed by a solid fence or wall as follows:

- (1) Any side of such yard which extends generally parallel to, and within 100 feet of any public street right-of-way shall be bounded by a solid fence or wall at least eight feet in height.
- (2) All sides of such yard not included in item (1) above shall be bounded by a solid fence or wall at least six feet in height.
- (3) The term "solid" as used herein shall mean constructed and maintained so that the outer surface thereof is continuous and without interstices, gaps, spaces or holes. This shall not be construed to prohibit any spaces or gaps left by a properly constructed and maintained chain link fence with strips or slats as hereinafter provided.

(d) *Construction, maintenance of fence or wall.* Every fence or wall herein required shall be constructed and maintained as follows:

- (1) All fences shall be constructed of wood, masonry, corrugated sheet metal, chain link, or any combination thereof; provided, however, that any one side shall be bounded by a fence or wall constructed of only one of the above materials.
- (2) Chain link fences shall be constructed of galvanized chain link fencing with wood or metal slats or strips run through all links of the chain link fence.
- (3) All fences or walls shall extend downward to within three inches of the ground and shall test plumb and square at all times.
- (4) All fences or walls shall be constructed in compliance with all applicable provisions of the Construction Code.

(e) *Use of wall, door of building as part of fence or wall.* Any part of a fence or wall required by subsection (c) hereof may consist, in whole or in part, of a solid wall and door, or walls and doors of

any completely enclosed building on said premises, if such wall or door meets all construction requirements hereinabove set forth.

(f) *Gates at openings in enclosure.* Openings in the prescribed enclosure which are necessary to permit reasonable access to such yards shall be equipped with a solid gate or gates, constructed and maintained in accordance with the requirements for a fence or wall hereinabove set forth. Such gates shall be closed and securely locked at all times except during normal daytime business hours.

(g) *Use of premises outside enclosure.* It shall be unlawful for any owner, operator, his agents or employees, to display, store or work on any junked or wrecked automotive vehicle, or the parts, accessories or junk therefrom or any other new or used metal materials outside of or above the herein required fence or wall.

(h) *Arrangement of materials.* All automotive vehicles, parts and other materials located in or on the premises of any yard owned or operated by a secondhand dealer in the city shall be so arranged to allow reasonable access to, and inspection of, the premises by authorized fire, neighborhood protection and police officials of the city.

(i) *Control of vegetation.* It shall be unlawful for the owners or operators of any yard used by a secondhand dealer to allow grass or other vegetation to grow to a height of more than nine inches above the ground.

(j) *Compliance with regulations and ordinances.* All yards used by a secondhand dealer must at all times be in full compliance with all city ordinances regarding health and safety, including specifically, without limitation, all requirements of the Fire Code.

(k) *Improved surface.* All lots or tracts of land used as a yard by a secondhand dealer must have an all-weather surface of concrete, asphalt, blacktop, stone, macadam, limestone, iron ore, gravel, shell, slag or other hard fill surface and appropriate drainage.

(l) *Storage of materials.* Any materials stored in a yard owned and operated by a secondhand dealer must be stored at least six inches above the

improved surface of the yard. The requirements of this subsection shall not apply to any materials stored wholly inside a building.

(m) *Violations and penalties.* Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a secondhand dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-73. Operation of yards used by metal recycling entities and secondhand metal dealers.

(a) *Compliance.* All lots or tracts of land used for the purpose of carrying on the business or trade of metal recycling entities or secondhand metal dealers shall comply with the requirement of this section.

(b) *Removal of flammable liquids from vehicles.* All gasoline, gasohol and diesel fuel shall be completely drained and removed from any junked, wrecked or abandoned automotive vehicle before the vehicle is placed in any yard owned or operated by a metal recycling entity or secondhand metal dealer in the city. All flammable liquids drained from any vehicle shall be stored in a safe manner and in strict accordance with the city Fire Code.

(c) *Fencing, wall requirements.* Every equipment and inventory storage and processing yard owned or operated by a metal recycling entity or secondhand metal dealer within the city shall be completely surrounded and enclosed by a solid fence or wall as follows:

- (1) Any side of such yard which extends generally parallel to, and within 100 feet of any public street right-of-way shall be bounded by a solid fence or wall at least six feet in height.
- (2) All sides of such yard not included in item (1) above shall be bounded by a solid fence or wall at least six feet in height.
- (3) The term "solid" as used herein shall mean constructed and maintained so that the outer surface thereof is continuous

and without interstices, gaps, spaces or holes. This shall not be construed to prohibit any spaces or gaps left by a properly constructed and maintained chain link fence with strips or slats as hereinafter provided.

(d) *Construction, maintenance of fence or wall.* Every fence or wall herein required shall be constructed and maintained in good repair as follows:

- (1) All fences shall be constructed of wood, masonry, corrugated sheet metal, chain link, or any combination thereof; provided, however, that any one side shall be bounded by a fence or wall constructed of only one of the above materials.
- (2) Chain link fences shall be constructed of galvanized chain link fencing with wood or metal slats or strips run through all links of the chain link fence.
- (3) All fences or walls shall extend downward to within three inches of the ground and shall test plumb and square at all times.
- (4) All fences or walls shall be constructed in compliance with all applicable provisions of the Construction Code.

(e) *Use of wall, door of building as part of fence or wall.* Any part of a fence or wall required by subsection (c) hereof may consist, in whole or in part, of a solid wall and door, or walls and doors of any completely enclosed building on said premises, if such wall or door meets all construction requirements hereinabove set forth.

(f) *Gates at openings in enclosure.* Openings in the prescribed enclosure which are necessary to permit reasonable access to such yards shall be equipped with a gate or gates, constructed and maintained in accordance with the requirements for a fence or wall hereinabove set forth. Such gates shall be closed and securely locked at all times except during normal business hours.

(g) *Use of premises outside enclosure.* It shall be unlawful for an owner, operator, his agents or employees, to display, store or work on any junked or wrecked automotive vehicle, or the parts, ac-

cessories or junk therefrom or any other new or used metal materials outside of the herein required fence or wall.

(h) *Arrangement of materials.* All automotive vehicles, parts and other materials located in or on the premises of any yard owned or operated by a metal recycling entity or secondhand metal dealer in the city shall be so arranged to allow reasonable access to, and inspection of, the premises by authorized fire, health and police officials and the neighborhood protection official of the city. No materials shall be stored at a height greater than six feet within ten feet of the fence required herein.

(i) *Control of vegetation.* It shall be unlawful for the owners or operators of any yard used by a metal recycling entity or secondhand metal dealer to allow grass or other vegetation to grow to a height of more than nine inches above the ground.

(j) *Compliance with regulations and ordinances.* All yards used by a metal recycling entity or secondhand metal dealer must at all times be in full compliance with all city ordinances regarding health and safety, including specifically, without limitation, all requirements of the city Fire Code.

(k) *Improved surface.* All lots or tracts of land used as a yard by a metal recycling entity or secondhand metal dealer must have an all-weather surface of concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, slag or other hard fill surface and appropriate drainage. This subsection shall not include those areas of a yard which are utilized for purposes of inventory storage and processing.

(l) *Vector and rodent control.* Any materials stored in a yard owned and operated by a metal recycling entity or secondhand metal dealer must be stored at in a manner which will allow adequate vector and rodent control measures. An owner or operator shall provide for vector and rodent control at least once within a 90-day period or more frequently as needed.

(m) *Violations and penalties.* Failure to comply with any provisions of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling

entity or secondhand metal dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-74. Rejection; refusal to renew; revocation; hearing; penalty.

(a) *Grounds for rejection, refusal to renew or revocation.* The director may reject an original application, or an application for a renewal of any existing license, if, as a result of inspections by the police department, the finance and administration department, or other city department, it appears that the applicants' place of business is not in compliance with or violates any provision of this article. Failure to comply with any provisions of this Code shall be grounds for the rejection of an original application, renewal or revocation of any license required of a metal recycling entity, secondhand metal dealer or secondhand dealer under this article. Any person violating any provision of this article shall be punished as provided by section 1-6 of this Code.

(b) *Notice.* If the director rejects an application, refuses to renew or revokes any license issued under this article to a metal recycling entity, secondhand metal dealer or secondhand dealer for failure to comply with any provision of this article, the director shall give written notice by certified mail to the applicant at the address stated in the application of the metal recycling entity, secondhand metal dealer or secondhand dealer. The written notice shall specifically set forth the reasons for the rejection, refusal or revocation.

(c) *Appeal.* The metal recycling entity, secondhand metal dealer or secondhand dealer shall have 30 days from the date of the mailing of the notice of rejection, refusal or revocation of his license to appeal the rejection, refusal or revocation of the license to the director. Upon receipt of such notice, the director shall notify the metal recycling entity, secondhand metal dealer or secondhand dealer of the date and time of the hearing, to be held at the earliest time practicable.

(d) *Hearings.*

- (1) All hearings shall be held before a hearing officer appointed by the director, who shall not designate any person to perform the duties of hearing officer under this section who has prior knowledge of the circumstances regarding the rejection, refusal, or revocation of the license. The hearing officer may, prior to the hearing, receive a copy of the notice given to the applicant or license holder.
- (2) An assistant city attorney may be present at the hearing to advise the hearing officer as to procedural matters; however, the attorney shall not participate in any determination of the facts.
- (3) All hearings shall be conducted under rules established by the director that are consistent with the informal nature of the proceedings; provided, however, the following rules shall apply to all hearings:
 - a. All parties shall have the right to representation by an attorney licensed to practice in Texas though an attorney is not required.
 - b. Each party may present witnesses in his own behalf.
 - c. Each party has the right to cross examine all witnesses.
 - d. Only evidence presented before the hearing officer at the hearing shall be considered in rendering the decision.
- (4) The hearing officer may affirm or reverse a license rejection, refusal to renew or a license revocation. The decision of the hearing officer shall be final and shall be delivered in writing to the applicant or license holder in the same manner as a notice under subsection (b) of this section.

(Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-75. Abatement of operations for unlawful operation of a metal recycling, secondhand metal, or secondhand business.

(a) *Declaration; notice.* The continued ownership and operation of or engaging in a business that participates in buying, selling, trading or

otherwise dealing in new or used metal in violation of this article is declared to be a public nuisance where (1) the metal recycling entity, secondhand metal dealer or secondhand dealer is convicted three or more times for violations under this article in a 24 month period, (2) the director finds and determines that the owner or operator habitually violates the provisions of this article and that issuance of citations and subsequent convictions for violations of this article are no longer adequate remedies to address unlawful operations, and (3) that pursuit of a civil action will promote preservation and protection of property of the city or its inhabitants. Whenever the existence of a public nuisance under this section shall come to the knowledge of the director, the director shall cause a written notice, as provided in subsection (b) of this section, to be sent to the owner identifying the business in violation of this article and directing that the unlawful activity cease within a reasonable time to be determined by the director.

(b) *Notice.*

- (1) The notice under this section must be given:
 - a. Personally to the owner in writing;
 - b. By letter addressed to the registered agent of the partnership or corporation for service of process, or to the individual owner at the owner(s) latest address according to the records of the director.
 - c. If personal service cannot be obtained:
 - (i) By publication at least once;
 - (ii) By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (iii) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- (2) If the director mails a notice to a property owner in accordance with subsection (a) of this section, and the United States Postal Service returns the notice as "refused" or

"unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

- (3) A notice provided under this section shall state that the owner is entitled to request a hearing to be held in the manner described in section (c) of this section.

(c) *Abatement hearing.* The owner subject to abatement under this section may request a hearing by notifying the director within ten (10) days following the date the city mails the required notice under subsection (b) of this section. The hearing shall be conducted in accordance with the procedures set forth in section 7-74(d) of this Code by a hearing official designated by the director for the purpose of determining whether the metal recycling entity, secondhand metal dealer or secondhand dealer has operated his business in violation of this article and the criteria set out in subsection (a) of this section are satisfied. At the hearing, the owner and the director may present any evidence relevant to the proceedings. If the hearing official determines that the metal recycling entity, secondhand metal dealer or secondhand dealer has operated his business in violation of this article or any other provision of this Code affecting metal recycling entity, secondhand metal dealer or secondhand dealer, and that the criteria set out in subsection (a) of this section for the designation of public nuisance have been satisfied, the hearing official shall issue an order so stating and direct that the owner cease the unlawful operations.

(d) *Abatement by city; expenses and liens.* If the owner fails to timely cease unlawful operations within ten business days of the hearing official's order, then the city attorney shall be authorized to exercise all other remedies available to the city relating to the subject matter hereof as set out in subsection (e) of this section.

(e) *Remedies cumulative, civil enforcement, other action not limited.* The procedures set forth in this section are cumulative of all other remedies available to the city relating to the subject matter hereof. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking any other available actions. Specifically, the city attorney may institute any legal action to enforce this

ordinance or enjoin or otherwise cause the abatement of any condition described in this article, as well as for the recovery of all expenses incurred in connection therewith, including without limitation administrative and legal expenses, attorneys fees and costs, and for civil penalties as provided by law. The city attorney is hereby authorized to file a civil suit in a court of competent jurisdiction to prevent the violation of any of the provisions of this article. This remedy shall be cumulative and in addition to any other remedies.

(Ord. No. 07-295, § 2, 3-21-07)

Secs. 7-76—7-80. Reserved.

ARTICLE IV. PAWNBROKERS

Sec. 7-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Pawnbroker* means any person who is required to be licensed as a pawnbroker by the state.
- (2) *Pledged goods* shall mean tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property was deposited with, or otherwise actually delivered into the possession of a pawnbroker as security for money loaned, or on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.
- (3) *Used goods* shall mean any items, goods, products, wares, chattels, or articles of any sort which have previously been owned by someone other than the manufacturer or a dealer

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dealer, his agents or employees to purchase or receive an item of property in its original packaging unless the person offering such item presents a receipt or proof of purchase for that property. (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-68. Acceptance of property inscribed with company name.

It shall be unlawful for any metal recycling entity or secondhand metal dealer, or his agents or employees, to purchase or receive an item of property that is marked with any form of the name or initials of a private company or that the metal recycling entity or secondhand metal dealer knows or should reasonably be expected to know belongs to a private company unless the person offering such property for sale presents at the time of such offer a written, signed statement from the seller attesting to lawful ownership of the property, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has authorization to sell or otherwise transfer that property. (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-69. Acceptance of property delivered by shopping cart.

It shall be unlawful for any metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees to purchase or receive an item of property that is transported to the metal recycling entity, secondhand metal dealer or secondhand dealer(s) place of business by a shopping cart that is marked with any form of the name or initials of a private company or that the metal recycling entity, secondhand metal dealer or secondhand dealer knows or should reasonably be expected to know belongs to a private company unless the person operating the shopping cart presents at the time of transportation of property to the metal recycling entity, secondhand metal dealer or secondhand dealer presents a valid receipt from the owner of the shopping cart evidencing the purchase of the shopping cart by the person operating the shopping cart. (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-70. Exemptions—From license fee.

An organization engaged in a business described herein, but which has qualified as non-profit and which is exempt from taxation under the provisions of Section 501(c)(3) of Title 26 (Internal Revenue Code) of the United States Code, must obtain a license as required herein; provided, however, that such organization shall be exempt from paying the license fee required herein. All other provisions of this article apply to such organizations. (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-71. Inapplicability of certain chapter provisions.

Notwithstanding any other provision of this article that might be construed to the contrary, the provisions of sections 7-58 and 7-60 of this Code shall not be applicable to the sale, receipt, transfer or holding of:

- (1) Used books, magazines and other printed documents;
 - (2) Used phonograph records, magnetic audio tapes, audio discs or other recordings of sound which do not include recordings of visual images; and
 - (3) Used items of clothing, except those made in whole or in part from fur.
- (Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-72. Operation of yards used by secondhand dealers.

(a) *Compliance.* All lots or tracts of land used for the purpose of carrying on the business or trade of a secondhand dealer or used for open storage by a secondhand dealer shall comply with the requirement of this section.

(b) *Removal of flammable liquids from vehicles.* All gasoline, gasohol and diesel fuel shall be completely drained and removed from any junked, wrecked or abandoned automotive vehicle before the vehicle is placed in any yard owned or operated by a secondhand dealer. All flammable liquids drained from any vehicle shall be stored in a safe manner and in strict accordance with the city Fire Code.

(c) *Fencing, wall requirements.* Every yard owned or operated by a secondhand dealer within the city shall be completely surrounded and enclosed by a solid fence or wall as follows:

- (1) Any side of such yard which extends generally parallel to, and within 100 feet of any public street right-of-way shall be bounded by a solid fence or wall at least eight feet in height.
- (2) All sides of such yard not included in item (1) above shall be bounded by a solid fence or wall at least six feet in height.
- (3) The term "solid" as used herein shall mean constructed and maintained so that the outer surface thereof is continuous and without interstices, gaps, spaces or holes. This shall not be construed to prohibit any spaces or gaps left by a properly constructed and maintained chain link fence with strips or slats as hereinafter provided.

(d) *Construction, maintenance of fence or wall.* Every fence or wall herein required shall be constructed and maintained as follows:

- (1) All fences shall be constructed of wood, masonry, corrugated sheet metal, chain link, or any combination thereof; provided, however, that any one side shall be bounded by a fence or wall constructed of only one of the above materials.
- (2) Chain link fences shall be constructed of galvanized chain link fencing with wood or metal slats or strips run through all links of the chain link fence.
- (3) All fences or walls shall extend downward to within three inches of the ground and shall test plumb and square at all times.
- (4) All fences or walls shall be constructed in compliance with all applicable provisions of the Construction Code.

(e) *Use of wall, door of building as part of fence or wall.* Any part of a fence or wall required by subsection (c) hereof may consist, in whole or in part, of a solid wall and door, or walls and doors of

any completely enclosed building on said premises, if such wall or door meets all construction requirements hereinabove set forth.

(f) *Gates at openings in enclosure.* Openings in the prescribed enclosure which are necessary to permit reasonable access to such yards shall be equipped with a solid gate or gates, constructed and maintained in accordance with the requirements for a fence or wall hereinabove set forth. Such gates shall be closed and securely locked at all times except during normal daytime business hours.

(g) *Use of premises outside enclosure.* It shall be unlawful for any owner, operator, his agents or employees, to display, store or work on any junked or wrecked automotive vehicle, or the parts, accessories or junk therefrom or any other new or used metal materials outside of or above the herein required fence or wall.

(h) *Arrangement of materials.* All automotive vehicles, parts and other materials located in on the premises of any yard owned or operated by a secondhand dealer in the city shall be so arranged to allow reasonable access to, and inspection of, the premises by authorized fire, neighborhood protection and police officials of the city.

(i) *Control of vegetation.* It shall be unlawful for the owners or operators of any yard used by a secondhand dealer to allow grass or other vegetation to grow to a height of more than nine inches above the ground.

(j) *Compliance with regulations and ordinances.* All yards used by a secondhand dealer must at all times be in full compliance with all city ordinances regarding health and safety, including specifically, without limitation, all requirements of the Fire Code.

(k) *Improved surface.* All lots or tracts of land used as a yard by a secondhand dealer must have an all-weather surface of concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, slag or other hard fill surface and appropriate drainage.

(l) *Storage of materials.* Any materials stored in a yard owned and operated by a secondhand dealer must be stored at least six inches above the

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improved surface of the yard. The requirements of this subsection shall not apply to any materials stored wholly inside a building.

(m) *Violations and penalties.* Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a secondhand dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-73. Operation of yards used by metal recycling entities and secondhand metal dealers.

(a) *Compliance.* All lots or tracts of land used for the purpose of carrying on the business or trade of metal recycling entities or secondhand metal dealers shall comply with the requirement of this section.

(b) *Removal of flammable liquids from vehicles.* All gasoline, gasohol and diesel fuel shall be completely drained and removed from any junked, wrecked or abandoned automotive vehicle before the vehicle is placed in any yard owned or operated by a metal recycling entity or secondhand metal dealer in the city. All flammable liquids drained from any vehicle shall be stored in a safe manner and in strict accordance with the city Fire Code.

(c) *Fencing, wall requirements.* Every equipment and inventory storage and processing yard owned or operated by a metal recycling entity or secondhand metal dealer within the city shall be completely surrounded and enclosed by a solid fence or wall as follows:

- (1) Any side of such yard which extends generally parallel to, and within 100 feet of any public street right-of-way shall be bounded by a solid fence or wall at least six feet in height.
- (2) All sides of such yard not included in item (1) above shall be bounded by a solid fence or wall at least six feet in height.
- (3) The term "solid" as used herein shall mean constructed and maintained so that the outer surface thereof is continuous

and without interstices, gaps, spaces or holes. This shall not be construed to prohibit any spaces or gaps left by a properly constructed and maintained chain link fence with strips or slats as hereinafter provided.

(d) *Construction, maintenance of fence or wall.* Every fence or wall herein required shall be constructed and maintained in good repair as follows:

- (1) All fences shall be constructed of wood, masonry, corrugated sheet metal, chain link, or any combination thereof; provided, however, that any one side shall be bounded by a fence or wall constructed of only one of the above materials.
- (2) Chain link fences shall be constructed of galvanized chain link fencing with wood or metal slats or strips run through all links of the chain link fence.
- (3) All fences or walls shall extend downward to within three inches of the ground and shall test plumb and square at all times.
- (4) All fences or walls shall be constructed in compliance with all applicable provisions of the Construction Code.

(e) *Use of wall, door of building as part of fence or wall.* Any part of a fence or wall required by subsection (c) hereof may consist, in whole or in part, of a solid wall and door, or walls and doors of any completely enclosed building on said premises, if such wall or door meets all construction requirements hereinabove set forth.

(f) *Gates at openings in enclosure.* Openings in the prescribed enclosure which are necessary to permit reasonable access to such yards shall be equipped with a gate or gates, constructed and maintained in accordance with the requirements for a fence or wall hereinabove set forth. Such gates shall be closed and securely locked at all times except during normal business hours.

(g) *Use of premises outside enclosure.* It shall be unlawful for an owner, operator, his agents or employees, to display, store or work on any junked or wrecked automotive vehicle, or the parts, ac-

cessories or junk therefrom or any other new or used metal materials outside of the herein required fence or wall.

(h) *Arrangement of materials.* All automotive vehicles, parts and other materials located in or on the premises of any yard owned or operated by a metal recycling entity or secondhand metal dealer in the city shall be so arranged to allow reasonable access to, and inspection of, the premises by authorized fire, health and police officials and the neighborhood protection official of the city. No materials shall be stored at a height greater than six feet within ten feet of the fence required herein.

(i) *Control of vegetation.* It shall be unlawful for the owners or operators of any yard used by a metal recycling entity or secondhand metal dealer to allow grass or other vegetation to grow to a height of more than nine inches above the ground.

(j) *Compliance with regulations and ordinances.* All yards used by a metal recycling entity or secondhand metal dealer must at all times be in full compliance with all city ordinances regarding health and safety, including specifically, without limitation, all requirements of the city Fire Code.

(k) *Improved surface.* All lots or tracts of land used as a yard by a metal recycling entity or secondhand metal dealer must have an all-weather surface of concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, slag or other hard fill surface and appropriate drainage. This subsection shall not include those areas of a yard which are utilized for purposes of inventory storage and processing.

(l) *Vector and rodent control.* Any materials stored in a yard owned and operated by a metal recycling entity or secondhand metal dealer must be stored in a manner which will allow adequate vector and rodent control measures. An owner or operator shall provide for vector and rodent control at least once within a 90-day period or more frequently as needed.

(m) *Violations and penalties.* Failure to comply with any provisions of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling

entity or secondhand metal dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 1-6 of this Code.

(Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-74. Rejection; refusal to renew; revocation; hearing; penalty.

(a) *Grounds for rejection, refusal to renew or revocation.* The director may reject an original application, or an application for a renewal of any existing license, if, as a result of inspections by the police department, the finance and administration department, or other city department, it appears that the applicants' place of business is not in compliance with or violates any provision of this article. Failure to comply with any provisions of this Code shall be grounds for the rejection of an original application, renewal or revocation of any license required of a metal recycling entity, secondhand metal dealer or secondhand dealer under this article. Any person violating any provision of this article shall be punished as provided by section 1-6 of this Code.

(b) *Notice.* If the director rejects an application, refuses to renew or revokes any license issued under this article to a metal recycling entity, secondhand metal dealer or secondhand dealer for failure to comply with any provision of this article, the director shall give written notice by certified mail to the applicant at the address stated in the application of the metal recycling entity, secondhand metal dealer or secondhand dealer. The written notice shall specifically set forth the reasons for the rejection, refusal or revocation.

(c) *Appeal.* The metal recycling entity, secondhand metal dealer or secondhand dealer shall have 30 days from the date of the mailing of the notice of rejection, refusal or revocation of his license to appeal the rejection, refusal or revocation of the license to the director. Upon receipt of such notice, the director shall notify the metal recycling entity, secondhand metal dealer or secondhand dealer of the date and time of the hearing, to be held at the earliest time practicable.

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(d) *Hearings.*

- (1) All hearings shall be held before a hearing officer appointed by the director, who shall not designate any person to perform the duties of hearing officer under this section who has prior knowledge of the circumstances regarding the rejection, refusal, or revocation of the license. The hearing officer may, prior to the hearing, receive a copy of the notice given to the applicant or license holder.
- (2) An assistant city attorney may be present at the hearing to advise the hearing officer as to procedural matters; however, the attorney shall not participate in any determination of the facts.
- (3) All hearings shall be conducted under rules established by the director that are consistent with the informal nature of the proceedings; provided, however, the following rules shall apply to all hearings:
 - a. All parties shall have the right to representation by an attorney licensed to practice in Texas though an attorney is not required.
 - b. Each party may present witnesses in his own behalf.
 - c. Each party has the right to cross examine all witnesses.
 - d. Only evidence presented before the hearing officer at the hearing shall be considered in rendering the decision.
- (4) The hearing officer may affirm or reverse a license rejection, refusal to renew or a license revocation. The decision of the hearing officer shall be final and shall be delivered in writing to the applicant or license holder in the same manner as a notice under subsection (b) of this section.

(Ord. No. 07-295, § 2, 3-21-07)

Sec. 7-75. Abatement of operations for unlawful operation of a metal recycling, secondhand metal, or secondhand business.

(a) *Declaration; notice.* The continued ownership and operation of or engaging in a business that participates in buying, selling, trading or

otherwise dealing in new or used metal in violation of this article is declared to be a public nuisance where (1) the metal recycling entity, secondhand metal dealer or secondhand dealer is convicted three or more times for violations under this article in a 24 month period, (2) the director finds and determines that the owner or operator habitually violates the provisions of this article and that issuance of citations and subsequent convictions for violations of this article are no longer adequate remedies to address unlawful operations, and (3) that pursuit of a civil action will promote preservation and protection of property of the city or its inhabitants. Whenever the existence of a public nuisance under this section shall come to the knowledge of the director, the director shall cause a written notice, as provided in subsection (b) of this section, to be sent to the owner identifying the business in violation of this article and directing that the unlawful activity cease within a reasonable time to be determined by the director.

(b) *Notice.*

- (1) The notice under this section must be given:
 - a. Personally to the owner in writing;
 - b. By letter addressed to the registered agent of the partnership or corporation for service of process, or to the individual owner at the owner(s) latest address according to the records of the director.
 - c. If personal service cannot be obtained:
 - (i) By publication at least once;
 - (ii) By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (iii) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- (2) If the director mails a notice to a property owner in accordance with subsection (a) of this section, and the United States Postal Service returns the notice as "refused" or

"unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

- (3) A notice provided under this section shall state that the owner is entitled to request a hearing to be held in the manner described in section (c) of this section.

(c) *Abatement hearing.* The owner subject to abatement under this section may request a hearing by notifying the director within ten (10) days following the date the city mails the required notice under subsection (b) of this section. The hearing shall be conducted in accordance with the procedures set forth in section 7-74(d) of this Code by a hearing official designated by the director for the purpose of determining whether the metal recycling entity, secondhand metal dealer or secondhand dealer has operated his business in violation of this article and the criteria set out in subsection (a) of this section are satisfied. At the hearing, the owner and the director may present any evidence relevant to the proceedings. If the hearing official determines that the metal recycling entity, secondhand metal dealer or secondhand dealer has operated his business in violation of this article or any other provision of this Code affecting metal recycling entity, secondhand metal dealer or secondhand dealer, and that the criteria set out in subsection (a) of this section for the designation of public nuisance have been satisfied, the hearing official shall issue an order so stating and direct that the owner cease the unlawful operations.

(d) *Abatement by city; expenses and liens.* If the owner fails to timely cease unlawful operations within ten business days of the hearing official's order, then the city attorney shall be authorized to exercise all other remedies available to the city relating to the subject matter hereof as set out in subsection (e) of this section.

(e) *Remedies cumulative, civil enforcement, other action not limited.* The procedures set forth in this section are cumulative of all other remedies available to the city relating to the subject matter hereof. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking any other available actions. Specifically, the city attorney may institute any legal action to enforce this

ordinance or enjoin or otherwise cause the abatement of any condition described in this article, as well as for the recovery of all expenses incurred in connection therewith, including without limitation administrative and legal expenses, attorneys fees and costs, and for civil penalties as provided by law. The city attorney is hereby authorized to file a civil suit in a court of competent jurisdiction to prevent the violation of any of the provisions of this article. This remedy shall be cumulative and in addition to any other remedies.

(Ord. No. 07-295, § 2, 3-21-07)

Secs. 7-76—7-80. Reserved.

ARTICLE IV. PAWNBROKERS

Sec. 7-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Pawnbroker* means any person who is required to be licensed as a pawnbroker by the state.
- (2) *Pledged goods* shall mean tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property was deposited with, or otherwise actually delivered into the possession of a pawnbroker as security for money loaned, or on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.
- (3) *Used goods* shall mean any items, goods, products, wares, chattels, or articles of any sort which have previously been owned by someone other than the manufacturer or a dealer

whose business it is to sell such when new to the consumer.

(Code 1968, § 31½-1; Ord. No. 77-1014, § 1, 5-24-77)

Sec. 7-82. Compliance required.

No pawnbroker shall engage in any transaction involving the buying, selling or trading of used goods other than pledged goods unless he complies with all provisions of this article.

(Code 1968, § 31½-2; Ord. No. 77-1014, § 1, 5-24-77)

Sec. 7-83. Books and records to be kept.

Any pawnbroker who in person or through an agent or employee engages in any transaction involving the buying, selling or trading of used goods other than pledged goods shall keep, consistent with accepted accounting practices, adequate books and records relating to all transactions involving the buying, selling or trading of used goods other than pledged goods. Such records shall be preserved for a period of at least two (2) years from the date of the last transaction recorded therein.

All such records shall be available for inspection during regular business hours upon request by any peace officer.

(Code 1968, § 31½-3; Ord. No. 77-1014, § 1, 5-24-77)

Sec. 7-84. Tickets for items received; contents.

Any pawnbroker, agent, or employee of a pawnbroker who purchases or otherwise receives used goods other than pledged goods in the course of his business shall complete a ticket for each item so received.

Such tickets shall contain the following information:

- (1) Name and address of the person from whom the item was received.
- (2) Driver's license number or Texas personal identification certificate number of the person selling the item or otherwise giving the item.
- (3) A full description of the property received, including serial number if the item has a serial number.

- (4) The signature of the person from whom the property is received.

All tickets issued in the course of the pawnbroker's business of buying, selling or trading goods other than pawned goods shall be consecutively numbered and a copy of each such ticket shall be made available to the police department upon their request if such request is received within one year of the date the ticket was completed.

(Code 1968, § 31½-4; Ord. No. 77-1014, § 1, 5-24-77)

Sec. 7-85. Goods to be available for examination by police department.

All goods other than pledged goods received by the pawnbroker, his agents or employees which are openly displayed or available to the public shall be accessible for examination by any peace officer at any time during regular business hours. Failure to permit such an examination when requested shall be a misdemeanor.

(Code 1968, § 31½-5; Ord. No. 77-1014, § 1, 5-24-77)

Sec. 7-86. Items to be retained for seven days.

No pawnbroker, nor agent or employee of a pawnbroker, shall sell, dismantle, deface or in any manner alter or dispose of any item purchased or otherwise received by him at his place of business for seven (7) days after receipt. During such seven-day period, all items of property shall be stored or displayed at the pawnbroker's business location, in the exact form received, and in a manner so as to be identifiable from the description set out on the ticket required under section 7-84. Such property shall be available during normal business hours for examination by any peace officer.

(Code 1968, § 31½-6; Ord. No. 77-1014, § 1, 5-24-77)

Sec. 7-87. Receiving of goods from minors.

No pawnbroker, nor agent or employee of a pawnbroker, shall purchase or otherwise receive in the course of the pawnbroker's business, any item, ownership of which is claimed by any minor, or which may be in the possession of or under control of a minor, unless the minor's parent or guardian shall state in writing, that such transaction is taking place with such parent or guardian's full knowledge and consent. It shall be the duty of such pawnbroker to preserve and keep on

file, and available for inspection, such written statements of consent.

(Code 1968, § 31½-7; Ord. No. 77-1014, § 1, 5-24-77)

Sec. 7-88. Duty to report offer to sell stolen property; purchase of city property.

(a) It shall be the duty of the pawnbroker to report immediately to the police department any offer to sell to the pawnbroker, his agents or employees, property which such pawnbroker, his agents or employees have actual knowledge is stolen or by reasonable diligence should know is stolen, together with the identity, when known, and description of the person or persons making such offer. Such pawnbroker, his agents or employees, shall also report any property acquired by the pawnbroker which the pawnbroker, his agents or employees, subsequently determines or reasonably suspects to be stolen property and the pawnbroker, his agents or employees shall furnish such other information as might be helpful to the police in investigating the matter.

(b) It shall be unlawful for any pawnbroker, his agents or employees to purchase an item of property on which are written or affixed the words "Property of the City of Houston" or other words demonstrating ownership by the city except in the following circumstances:

- (1) Where the person offering such property for sale is an employee of the city authorized by the city treasurer to make such a sale and provides the pawnbroker, his agents or employees with a written authorization from the city treasurer for the sale of such property; or,
- (2) Where the person offering such property for sale presents, at the time of such offer, a valid receipt from the city treasurer evidencing the purchase of such property by the person offering such property.

(Code 1968, § 31½-8; Ord. No. 77-1014, § 1, 5-24-77)

Sec. 7-89. Responsibility for violations.

Each pawnbroker shall be responsible for any action done in the course of the pawnbroker's business by any agent or employee of such pawnbroker which is in violation of this article whether

or not such pawnbroker had knowledge of such action.

(Code 1968, § 31½-9; Ord. No. 77-1014, § 1, 5-24-77)

Secs. 7-90—7-100. Reserved.

ARTICLE V. COMMON MARKETS*

Sec. 7-101. Definitions.

The following words and phrases shall have the following meanings in this article unless otherwise clearly indicated in the text. Words not defined shall be interpreted in their usual sense.

- (1) *Common market* shall mean any tract of land, including all improvements thereon, on which five (5) or more spaces, booths and/or rooms are rented or let for a period not to exceed eight (8) consecutive days, for the purpose of selling used goods. However, if the lessor rents or lets five (5) or more spaces, booths, and/or rooms, for a period not to exceed eight (8) consecutive days, for purposes other than the sale of used goods, and subsequently permits the sale of used goods from five (5) or more spaces, booths and/or rooms that tract shall be deemed a common market.
- (2) *Used goods* shall mean any items, goods, products, wares, chattels, or articles of any kind or character which have previously been owned by someone other than the manufacturer or a dealer whose business it is to sell such when new to the consumer.

(Code 1968, § 12½-1; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-102. License required; display of licenses.

No person shall own or operate a common market unless he has a valid license issued by the tax assessor-collector. Any person who owns or operates a common market at more than one location must obtain a license for each separate location. In the event the person who operates a common

*Cross references—The Houston Festival, § 12-81 et seq.; rat-proofing for curb and farmer's markets, § 21-128 et seq.; itinerant vendors, Ch. 22.

market is not the owner thereof, both the owner and the operator shall be co-licensees. Each license required under this article shall be conspicuously posted upon the licensed premises.
(Code 1968, § 12½-2; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-103. Application for license.

(a) To obtain a license to own or operate a common market, the applicant shall submit an application therefor in writing to the tax assessor-collector on a form furnished by the city for that purpose. The applicant shall set forth:

- (1) The name and address of the common market.
- (2) The name and address of the persons who will operate the common market.
- (3) If the owner or operator is a corporation, all officers of the corporation; and if there are fewer than five (5) shareholders, the names of all shareholders.
- (4) If the owner or operator is a partnership, the names and addresses of all partners.
- (5) If the owner or operator is an association, the names and addresses of all officers of such association.
- (6) The street address where the common market is located.
- (7) The legal description of the property on which the common market is located.
- (8) Whether or not any person required to be listed on the application has had a license revoked under this article at any time.

(b) Such application shall be subscribed and sworn to by all owners and operators of the specified market before an officer authorized to administer oaths.
(Code 1968, § 12½-3; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-104. License issuance; notification upon rejection.

The tax assessor-collector shall issue a license upon submission of an application in accordance with this article and payment of the license fee, unless he finds the applicant cannot be granted a license under section 7-105 of this Code.

If the tax assessor-collector rejects the application, he shall give written notice by certified mail, return receipt requested, to the applicant stating the reasons for such rejection. If an application is rejected on a finding that the applicant cannot be granted a license under section 7-105 of this Code, no portion of the license fee shall be refunded.
(Code 1968, § 12½-4; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-105. Grounds for not issuing license.

No person may be granted a license to own or operate a common market at a particular location if:

- (1) Any statement made in the application was incomplete or false.
- (2) Any person required to be listed on the application has had a license revoked under this article.

(Code 1968, § 12½-5; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-106. Transfer of license.

Any license issued in accordance with this article is personal to the applicant and is neither transferable, nor alienable.

(Code 1968, § 12½-6; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-107. License expiration and renewal.

Each license issued in accordance with this article shall expire one year from the date of issuance. The license may be renewed by submitting an application in accordance with section 7-103 of this Code and payment of the license fee.

(Code 1968, § 12½-7; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-108. License fee.

The annual fee for each license to own and operate a common market shall be sixty dollars (\$60.00) per year.

(Code 1968, § 12½-8; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-109. Licensee to keep records.

(a) Each person who is licensed pursuant to the provisions of this article shall cause to be kept a record of each transaction in which a space, booth and/or room in a common market is rented or let, unless such space, booth, and/or room is rented or let for thirty (30) consecutive days or more and

such space, booth and/or room will be open for business not less than five (5) days per week. Such record shall include:

- (1) The name of each person renting or leasing the space, booth and/or room.
- (2) The dates of such space, booth and/or room may be used by the person renting or leasing the same.
- (3) The name of all persons who will be selling or assisting the lessee in selling goods in that space, booth and/or room.
- (4) The mailing address of each person renting or leasing a space, booth and/or room and of each person selling and/or assisting in the selling of goods in that space, booth and/or room.
- (5) The driver's license number of each person renting or leasing a space, booth and/or room, and of each person selling and/or assisting in the selling of goods from that space, booth and/or room; or if any such person does not have a valid driver's license and is sixteen (16) years of age or older, such person shall be required to present a personal identification certificate issued by the Texas Department of Public Safety and the number of such personal identification certificate shall be listed in the record required under this section.
- (6) The license plate number, make, model, and color of the vehicle used by each person selling or assisting in the selling of goods from a space, booth or room.

(b) The licensee shall maintain the records so described in a record book which has a carbon copy, the original being the city police department's copy and the carbon being for the licensee's records. The licensee's copies shall be available for inspection by any peace officer or authorized inspector of the tax assessor-collector's office during regular business hours. The licensee shall maintain his copies of such records for six (6) months after the dates the persons listed were permitted to use such space, booth or room and shall maintain the originals for the same period unless the police department has taken custody of the originals prior to the expiration of that time.

It will be the responsibility of the police department to pick up the original copies of the records.

(c) The licensee shall not permit any person to sell or assist in the selling of any goods from any space, booth or room for which a record is required to be kept by this section unless such person is listed in the licensee's records.
(Code 1968, § 12½-9; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-110. Examination of goods.

(a) All goods located on the property of the common market which are openly displayed or available for purchase in a space, booth or room for which a record must be kept under section 7-109 of this Code shall be accessible for examination by any police officer of the city at any time the common market is open to the public.

(b) Prior to renting or letting any space, booth and/or room for which a record must be kept under section 7-109 of this Code, the licensee shall give written notice to the person renting or letting such space of the provisions of subsection (a) above.
(Code 1968, § 12½-10; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-111. Grounds for revocation of license.

A license issued under this article may be revoked in accordance with the following procedures if it is found that:

- (a) The licensee has violated any provisions of this article.
- (b) Any person required to be listed on the application for the license has, since the license was granted, violated any federal or state criminal statutes involving theft or fraud after such license was granted.
- (c) Any statements made in the application for the license were known to be false or should have been known to be false by any person required to sign the application.

(Code 1968, § 12½-11; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-112. Investigation of facts prior to revocation of license; notice to licensee of possible revocation.

Whenever the tax collector-assessor receives reliable information that grounds for revocation of

a license exists, he shall investigate the facts. If he finds that there are probable grounds for revocation of a license, he shall give written notice to the licensee by personal service or by certified mail, return receipt requested. Such notice shall set forth:

- (a) The specific grounds upon which the license in question may be revoked.
- (b) That there will be a hearing before the tax assessor-collector or his designated representative in which the city will seek the revocation of the license.
- (c) The date, time and place of such hearing.
- (d) That the licensee may appear in person and/or be represented by an attorney and may present testimony and may examine all witnesses.

In the event the address of the licensee is unknown or notice which has been mailed is returned undelivered, service upon any agent of the licensee at the common market shall be deemed service upon the licensee.

(Code 1968, § 12½-12; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-113. Hearing on license revocation.

(a) All hearings shall be held by the tax assessor-collector or his designated representative. Such officer shall be referred to as the hearing officer. However, the tax assessor-collector shall not designate any person or persons to perform the duties of hearing officer under this section who has participated in the investigation or has prior knowledge of the allegations or circumstances discovered in the course of said investigation except those set forth in the notice given pursuant to section 7-112.

(b) All hearings shall be conducted under rules consistent with the nature of the proceedings, and only evidence presented before the tax assessor-collector at such hearing may be considered in rendering the final order.

(Code 1968, § 12½-13; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-114. Failure of licensee to appear at hearing.

If the licensee fails to appear at the hearing at the date and time specified, the city shall introduce evidence to establish a prima facie case showing that grounds exist for revocation of the license.

(Code 1968, § 12½-14; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-115. Findings of hearing officer.

After completion of the presentation of evidence by all parties appearing, the hearing officer shall make written findings in an order as to whether or not there are grounds for revocation of the license, and if there are such grounds setting forth in such written findings the specific facts supporting such grounds. If the hearing officer finds that grounds do exist for revocation of the license, he shall revoke the license for such common market. A true and accurate copy of the hearing officer's order shall be personally delivered or sent by certified mail, return receipt requested, to the licensee.

(Code 1968, § 12½-15; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-116. License fee not to be refunded upon revocation of license.

In the event any such license is revoked by the hearing officer, the city shall not be liable to any person for any refund of any part of the license fee.

(Code 1968, § 12½-16; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-117. Applicability of other ordinances.

Persons who sell used goods from a space, booth or room in a common market shall not be required to comply with the requirements of articles II or III of this chapter, except that any person who engages in the business of selling used goods in one or more common markets on five (5) or more days, whether such days are consecutive or not, in any two (2) consecutive month period must comply with all applicable requirements of such articles.

(Code 1968, § 12½-17; Ord. No. 78-1884, § 1, 9-26-78)

Sec. 7-118. Penalty for failure to obtain license or violation of article.

Any person who owns or operates a common market but does not have a valid license therefor shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Each day such owner or operator permits the sale of any goods from such unlicensed common market shall constitute a separate offense. Any other violation of the provisions of this article shall constitute a misdemeanor which shall be punishable as provided in section 1-6 of this Code.

(Code 1968, § 12 $\frac{1}{2}$ -18; Ord. No. 78-1884, § 1, 9-26-78; Ord. No. 92-1449, § 10, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.